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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-oOo-

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN BANG WINN,

Defendant.

Case No.: 2:13-cr-00295-GMN-PAL

**GOVERNMENT'S RULE 48 MOTION TO
DISMISS THE INDICTMENT**

The United State of America hereby respectfully submits this Rule 48 Motion to Dismiss the Indictment as to defendant Kevin bang Winn ("Winn").

I. Factual and Procedural Background

On July 31, 2013, the grand jury for the District of Nevada charged Winn in an eleven-count indictment. ECF No. 1. On May 4, 2015, Winn pleaded guilty to count one of the indictment and under the terms of the plea agreement reserved his right to appeal the Court's denial of his motion to dismiss counts one through five of the Indictment. ECF NO. 61.

After Winn entered his plea and was sentenced, but before the Ninth Circuit ruled on his appeal, the Ninth Circuit issued its opinion in *United States v. Holden*, 806, F.3d 1227 (9th Cir. 2015)

(holding that health care fraud is a continuing offense but that the government must charge a single ongoing scheme and deem the individual acts as being in furtherance of that scheme). Based on *Holden*, the parties jointly moved the Ninth Circuit to vacate this Court's judgment and remand the case this Court. On remand, Winn withdrew his guilty plea. ECF No. 86

The Government now moves under Rule 48 of the Federal Rules of Criminal Procedure to dismiss the indictment.

II. Points and Authorities

A. Legal Standard for Government's Voluntary Dismissal of an Indictment Prior to Trial

Rule 48(a) of the Federal Rules of Criminal Procedure, governing "Dismissal, (a) By the Government," provides that, "The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent."

B. Good Cause and the Interests of Justice Support Dismissing the Indictment with Prejudice

The government cannot proceed on counts one through five under *Holden*. Upon a thorough reassessment of the evidence in this case based on proceeding only on the remaining counts, the United States has concluded that the interests of justice require dismissal of the indictment. The United States moves for an immediate dismissal of the indictment with prejudice.

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III. Conclusion

WHEREFORE, after consideration of the included facts, points, authorities, exhibits, and arguments, the United States respectfully requests that this Court dismiss the indictment

DATED this 16th day of April, 2017.

Respectfully submitted,

STEVEN W. MYHRE
Acting United States Attorney

//s//

NICHOLAS D. DICKINSON
Assistant United States Attorney

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA,
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Defendant.

Case No.: 2:13-cr-00295-GMN-PAL

ORDER DISMISSING THE INDICTMENT

Under Federal Rules of Criminal Procedure Rule 48(a), and by leave of Court endorsed hereon, the Acting United States Attorney for the District of Nevada hereby dismisses the Criminal Indictment filed on July 31, 2013, and requests the case be closed. Leave of Court is granted for the filing of the foregoing dismissal and the case is dismissed with prejudice

DATED this 16 day of March, 2017.



GLORIA M. NAVARRO, Chief Judge
United States District Court